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Counsel for Defendant JAMES LINTZ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR 08 - 298 SI
)	
Plaintiff,)	JAMES LINTZ'S NOTICE OF
)	MOTION AND MEMORANDUM
v.)	OF POINTS AND AUTHORITIES
)	IN SUPPORT OF MOTION TO
JAMES LINTZ,)	SUPPRESS EVIDENCE
)	
Defendant.)	Date: August 22, 2008
)	Time: 10:00 a.m.
)	Court: Judge Illston

TO: UNITED STATES OF AMERICA, PLAINTIFF; AND JOSEPH P. RUSSONIELLO,
UNITED STATES ATTORNEY; AND BRIAN J. STRETCH, CHIEF, CRIMINAL
DIVISION; AND ERIKA R. FRICK, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on August 22, 2008 at 10:00, or as soon thereafter as the matter may be heard before the Honorable Susan Illston, defendant James Lintz, by and through counsel, will move this Court to suppress any and all evidence following the unlawful seizure of Mr. Lintz by San Francisco police officers on March 24, 2008. Mr. Lintz respectfully requests an evidentiary hearing if the Court is unable to ascertain the illegality of the officers' conduct based upon the parties' submissions.

This motion is based on the following memorandum of points and authorities and accompanying exhibits, the Constitution of the United States, all other applicable constitutional, statutory and case authority, and such evidence and argument as may be presented at the hearing.

STATEMENT OF FACTS¹

Defendant James Lintz is charged in a one-count indictment with a violation of 18 U.S.C. § 922(g)(1), felon in possession of a firearm. The charge stems from events which occurred on March 24, 2008, at approximately 3:52 p.m. At that time, according to the police report, four San Francisco police officers were on patrol in an unmarked police car in the Hunter's Point District of San Francisco. While traveling southbound on Hudson Avenue, the officers observed a vehicle heading northbound on Hudson in the vicinity of Ardath Court which contained four black adult males.

The vehicle was driven by Charles Toney, who was accompanied by Mr. Lintz and two other passengers. Lintz Decl. at 1. Claiming that they had seen some sort of vehicle violation, the police decided to make a U-turn to stop Mr. Toney's car. Before the police could make the U-turn and stop Mr. Toney's car, however, Mr. Toney pulled his car onto Reuel Court and stopped to let Mr. Lintz get out. *Id.* At that point, Mr. Lintz got out of the car and began to walk away from the car. *Id.* When he was about 10 feet from Mr. Toney's car, the police pulled up behind the Mr. Toney's car and activated their emergency lights. *Id.* at 2.

At least two of the officers in the unmarked car got out, and one of them yelled at Mr. Lintz to stop. Recognizing that the individuals were police officers, Mr. Lintz complied and stopped walking. *Id.* The police then ordered Mr. Lintz to reenter the vehicle. *Id.* Mr. Lintz immediately complied with the command and was detained inside the vehicle. *Id.* He did not feel he was free to leave at that point. *Id.*

The police claim that Mr. Lintz then made furtive gestures, and they ordered him out of the car. They then searched him and found the gun at issue in this case.

¹ The facts are taken from the attached police reports provided to Counsel during discovery, except for those facts supported by the attached declaration of James Lintz, which are referenced as such (Lintz Decl.). The defendant does not attest to the accuracy of the facts contained in the police reports, and awaits appropriate declarations from the police officers at issue in this matter.

ARGUMENT

I. THE GOVERNMENT BEARS THE BURDEN OF PROVING BY A PREPONDERANCE THAT A SEIZURE IS EFFECTED PURSUANT TO A VALID EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT.

The detention and search of Mr. Lintz was undertaken without a warrant. The government bears the burden of establishing the factual basis for a valid exception to the warrant requirement by a preponderance of the evidence. *United States v. Linn*, 880 F.2d 209, 214 (9th Cir. 1989).

II. THE VEHICLE STOP WAS INVALID.

The government specifically bears the burden of showing that the officers' initial decision to seize Mr. Toney's vehicle by pulling up behind it in a police vehicle and activating emergency lights, was supported by an objectively reasonable suspicion that Mr. Toney had committed a traffic violation. The defendant is aware of no facts which would allow the government to meet this burden. As a consequence, the initial stop of Mr. Toney's car and the seizure of Mr. Lintz was illegal.

III. THE SEIZURE OF MR. LINTZ WAS INVALID.

Assuming for the sake of argument that the stop of Mr. Toney's car was valid, Mr. Lintz's compliance with the order to reenter the vehicle constituted a seizure subject to Fourth Amendment scrutiny. The seizure was not executed pursuant to a valid exception to the Fourth Amendment warrant requirement. It was not supported by reasonable articulable suspicion, nor was it authorized by the Ninth Circuit's decision in *United States v. Williams*, 419 F.3d 1029 (9th Cir. 2005) (reasonable for police to order a passenger who is lawfully detained pursuant to a *Terry*-stop and voluntarily exits the vehicle to reenter the vehicle). Accordingly, the Court should find that the seizure of Mr. Lintz was unlawful and should suppress all fruits of the seizure.

A. Mr. Lintz Was Seized for Purposes of the Fourth Amendment.

Under the Fourth Amendment, the people are "to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. A seizure occurs "whenever a police officer accosts an individual and restrains his freedom to walk away," *Terry v. Ohio*, 392

1 U.S. 1, 16 (1968), such that “a reasonable person would have believed that he was not free to
2 leave.” *United States v. Mendenhall*, 446 U.S. 544, 546 (1980) (plurality). An individual’s
3 “*submission* to the assertion of authority” is sufficient to indicate that a seizure has occurred.
4 *California v. Hodari*, 499 U.S. 621, 626 (1991) (emphasis in original). The Fourth Amendment
5 “applies to all seizures of the person, including seizures that involve only a brief detention short of
6 traditional arrest.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000)
7 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

8 Mr. Lintz’s compliance with an order from the police to stop walking away from Mr.
9 Toney’s car and to reenter the vehicle constituted a seizure of his person. Before the seizure, the
10 four officers had activated their emergency lights and thus identified themselves as police officers
11 to Mr. Lintz. No reasonable person in Mr. Lintz’s situation would have felt free to leave given
12 such a show of authority, and Mr. Lintz subjectively did not feel he was free to leave. Indeed,
13 when one officer issued the clear directive to reenter the car, Mr. Lintz complied immediately in
14 an unequivocal submission to authority. Mr. Lintz was thus seized for purposes of the Fourth
15 Amendment.

16 **B. The Seizure of Mr. Lintz Was Not Effected Pursuant to a Valid Exception to the**
17 **Fourth Amendment Warrant Requirement.**

18 The Fourth Amendment establishes a strong preference for seizures executed pursuant to a
19 warrant. *Terry*, 392 U.S. at 20. Warrantless seizures are *per se* unreasonable, subject only to a
20 few limited exceptions. *Id.*; *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001). First,
21 an officer may briefly detain a suspect without a warrant “if the officer . . . has a reasonable
22 suspicion supported by articulable facts that criminal activity may be afoot.” *Montero-Camargo*,
23 208 F.3d at 1129 (citations and internal quotation marks omitted). Second, a police officer may
24 reasonably effect a suspicionless seizure of a person in a car which has been validly stopped in
25 order to insure, *inter alia*, officer safety. *See Williams*, 419 F.3d at 1034.

26 Mr. Lintz’s seizure was neither supported by reasonable articulable suspicion nor authorized
by *Williams*; thus, the government cannot meet its burden, and all fruits of the unlawful seizure

1 must be suppressed.

2 **1. The Seizure Was Not Supported by Reasonable Articulate Suspicion.**

3 Pursuant to *Terry*, 392 U.S. 1 (1968), an officer may briefly detain a suspect with
4 reasonable, articulable suspicion that “criminal activity is afoot.” *Montero-Camargo*, 208 F.3d at
5 1129 (citations and internal quotation marks omitted). The Ninth Circuit has articulated the
6 standard under *Terry* and its progeny as follows:

7 the officer in question must be able to articulate more than an inchoate and unparticularized
8 suspicion or hunch of criminal activity. Rather, reasonable suspicion exists when an officer
is aware of specific, articulable facts which, when considered with objective and reasonable
inferences, form a basis for particularized suspicion.

9 *Id.* (citations and internal quotation marks omitted).

10 The requirement of reasonable suspicion incorporates two elements: “First, the assessment
11 must be based upon the totality of the circumstances. Second, that assessment must arouse a
12 reasonable suspicion that the *particular person* being stopped has committed or is about to commit
13 a crime.” *Id.* (citations and footnote omitted) (emphasis added).

14 The record is devoid of facts that would suggest to a reasonable officer that Mr. Lintz had
15 committed or was about to commit a crime at the time he was seized. When he was ordered into
16 Mr. Toney’s car, Mr. Lintz was ten feet away from the vehicle and walking away from it. He
17 displayed no signs of criminal behavior. Mr. Lintz’s seizure was thus not supported by
18 reasonable articulable suspicion.

19 **2. Seizure Was Not Authorized By *Williams*.**

20 Absent particularized suspicion, warrantless seizures are “ordinarily unreasonable” and
21 permitted only under “limited circumstances.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 37
22 (2000). Under *Williams*, however, a car passenger who has been lawfully detained during a
23 traffic stop may be required to face the additional minor inconvenience of waiting inside the
24 vehicle if compelled by officer safety. *Williams*, 419 F.3d at 1034.

25 _____*Williams* does not control this case. When he was seized, Mr. Lintz was not a passenger in
26 a lawfully stopped vehicle, but a pedestrian who was walking down the street on foot. The

1 command that he enter Mr. Toney's car thus constituted an initial seizure, rather than an
2 additional inconvenience applied to a lawfully detained passenger in a car. Thus, the warrantless
3 seizure of Mr. Lintz was not authorized by the Ninth Circuit's decision in *Williams*.

4 **CONCLUSION**

5 The government cannot meet its burden of demonstrating that Mr. Lintz's seizure was
6 lawful. For the reasons articulated above, the Court should grant the motion to suppress all fruits
7 of the warrantless seizure.

8 Dated: June 27, 2008

9 Respectfully submitted,

10 BARRY J. PORTMAN
11 Federal Public Defender

12 /s/

13 GEOFFREY A. HANSEN
14 Chief Assistant Federal Public Defender

San Francisco Police Report, 080310136
Exhibit A

San Francisco Police Department
INCIDENT REPORT

080310136

Report Type: Initial

080310136

Incident Number 080-310-136	Occurrence from Date/Time 3/24/08 15:51	Occurrence to Date/Time 3/24/08 15:55	Reported Date/Time	CAD Number 080842378
Type of Incident Firearm, Loaded, in Vehicle, Possession or Use -12168, Firearm with Altered Identification -27122, Firearm, Possession By Prohibited Person -12080				
Location of Occurrence Hudson Av At Intersection with/Premise type Reuel Ct Street, (Not Sidewalk)				
Confidential Report? <input type="checkbox"/>	Arrest Made? <input checked="" type="checkbox"/>	Suspect Known? <input type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>
Domestic Violence? <input type="checkbox"/> (Type of Weapon Used)				Reporting Unit 3C38R
Location Sent On View				
How Cleared? 6	Reported to Bureau Gang Task Force	Name Off. Jackson	Star 876	Date/Time 3/24/08 16:50
Elder Victim <input type="checkbox"/>	Gang Related? <input checked="" type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	Prejudice Based? <input checked="" type="checkbox"/>	

DECLARATION

I declare under penalty of perjury, this report of 7 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved.

PROP 115 CERTIFIED 5 YEAR/POST

Signature: *[Signature]*

Reporting Officer Kirchner, Jason F	Star 423	Station Bayview Station	Watch 1200-2200	Date 3/24/08 20:34:06
Reviewing Officer <i>[Signature]</i>	STAR 737	Station Bayview Station	Watch 1200-0100	Date 3-24-08
OIC LT. DOMINIC M. CELAYA #113	STAR	Station Bayview Station	Watch 15/01	Date 3-24-08
Related Case	Related Case	Re-Assigned to	Assigned to 5G200	Assigned by J.K. #423
Copies to 5G200 5E200 5G200 Add'l Copies DA/2, OR, ATF Triggerlock II <i>ETF</i>				

REPORTEE

Code R	Name (Last, First Middle) SFPD #423, #4184, #441, #1994	Alias
Day Phone Type	Home Address	City State Zip Code
Night Phone (415) 671-2300 Type Work	Work Address 201 Williams Avenue	City San Francisco State CA Zip Code 94124-
DOB / Age Unk. <input type="checkbox"/>	or age between: and	Race Sex Height Weight Hair Color Eye Color ID Type Jurisd. ID No.
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>
School (if Juvenile)	Injury/Treatment	Other Information/If Interpreter Needed Specify Language

BOOKED

Code B 1	Name (Last, First Middle) Lintz, James	ALIAS "Zuke"
Day Phone Type	Home Address 42 Westbrook Court	City San Francisco State CA Zip Code 94124-
Night Phone Type	Work Address	City State Zip Code
DOB Unknown <input type="checkbox"/>	Date of Birth 9/25/81	Age 26
or age between: and	Race B	Sex M
Height 5'08	Weight 210	Hair Color BLK
Eye Color BRO	ID Type/Jurisdiction/Number SFNO 565912 J/D# (if Juvi.) CII 22389281	ID Type/Jurisdiction/Number FBI 763618PB8
Book Section #1 N/W 12090 PC	Book Section #2 N/W 12094(a)PC	Book Section #3 N/W 12021a1PC
Book Section #4 N/W 12031 2aPC	Book Section #5 N/W 12023(a)PC	Booking Location Bayview Station
Warrant #	Court #	Action #
Dept	Enroute to	CWB Check Dave
Star 1713	Warrant Violation(s)	Bail
Mirandized <input checked="" type="checkbox"/>	Star 441	Date 3/24/08
Time 17:50	Statement <input checked="" type="checkbox"/>	
Citation #	Violation(s)	Appear Date/Time
Location of Appearance	Book/Cite Approval Sgt. Ewins	Star 733
Mass Arrest Code	M X-Rays <input type="checkbox"/>	School (if Juvenile)
CA Form Booked Copy Attached	Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos	

Add'l Charges: N/W 12025 (b)(1) PC (2 counts), N/W 12020 (a) PC

JL0002

San Francisco Police Department

080310136

ADDITIONAL SUSPECTS

DETAINED 2	CODE D 2	Name (Last, First Middle) Toney, Charles Earl				Alias				
	Day Phone Type		Home Address			City		State	Zip Code	
	Night Phone Type		Work Address			City		State	Zip Code	
	School (if Juvenile)		Race B	Sex M	DOB Unknown <input type="checkbox"/>	DOB 10/26/85	Height	Weight	Hair Color BLK	Eye Color BRO
	SFNO	I/D# (if Juv.)	ID No. DL D2236840 CA		ID No.		ID No.			
	Book/Charge 1		Book/Charge 2		Book/Charge 3		Book/Charge 4		Book/Charge 5	Where Booked
	Warrant #	Court #	Action #	Dept	Enroute To			CWB Check	Star	
	Warrant Violation(s)				Bail	Mirandized <input checked="" type="checkbox"/>	Star 4184	Date/Time 3/24/08 16:17	Statement <input checked="" type="checkbox"/>	
	Citation #	Violation(s)				Appear Date/Time		Location of Appearance		
	Book/Cite Approval Star		Mass Arrest Code		M X-Rays <input type="checkbox"/>					
Other Information: Citation/Warrant/Booking Charge(s)/Missing Persons-Subject Description/Scars, Marks, Tattoos Driver of (F) vehicle. Released per 849 (b) PC										
PVT PERSON ARREST	<input type="checkbox"/> ORIGINAL PRIVATE PERSON'S ARREST FORM BOOKED AS EVIDENCE. PHOTOCOPY ATTACHED WITH THIS REPORT.									
DETAINED 3	CODE D 3	Name (Last, First Middle) Williams, Nyjil Toney				Alias				
	Day Phone Type		Home Address 66 Ardath Court			City San Francisco		State CA	Zip Code 94124-	
	Night Phone Type		Work Address			City		State	Zip Code	
	School (if Juvenile)		Race B	Sex M	DOB Unknown <input type="checkbox"/>	DOB 8/9/84	Height 507	Weight 193	Hair Color BLK	Eye Color BRO
	SFNO 604384	I/D# (if Juv.)	ID No.		ID No.		ID No.			
	Book/Charge 1		Book/Charge 2		Book/Charge 3		Book/Charge 4		Book/Charge 5	Where Booked
	Warrant #	Court #	Action #	Dept	Enroute To			CWB Check	Star	
	Warrant Violation(s)				Bail	Mirandized <input checked="" type="checkbox"/>	Star 441	Date/Time 3/24/08 16:45	Statement <input checked="" type="checkbox"/>	
	Citation #	Violation(s)				Appear Date/Time		Location of Appearance		
	Book/Cite Approval Star		Mass Arrest Code		M X-Rays <input type="checkbox"/>					
Other Information: Citation/Warrant/Booking Charge(s)/Missing Persons-Subject Description/Scars, Marks, Tattoos Released per 849 (b) PC										
PVT PERSON ARREST	<input type="checkbox"/> ORIGINAL PRIVATE PERSON'S ARREST FORM BOOKED AS EVIDENCE. PHOTOCOPY ATTACHED WITH THIS REPORT.									

SFPD377 C (11/02)

San Francisco Police Department
ADDITIONAL SUSPECTS

080310136

D E T A I N E D	CODE D 4	Name (Last, First Middle) Wilkins, Landon				Alias				
	Day Phone	Type	Home Address 39 Westbrook Ct				City San Francisco	State CA	Zip Code 94124-	
	Night Phone	Type	Work Address				City	State	Zip Code	
	School (if Juvenile)		Race B	Sex M	DOB Unknown <input type="checkbox"/>	DOB 4/23/86	Height 511	Weight 245	Hair Color BLK	Eye Color BRO
	SFNO 618525	J/D# (if Juv.)	ID No. CII 27962708		ID No. FBI 092273PC7		ID No. DL D2540309 CA			
	Book/Charge 1		Book/Charge 2		Book/Charge 3		Book/Charge 4		Book/Charge 5	Where Booked
	Warrant #	Court #	Action #	Dept	Enroute To			CWB Check	Star	
	Warrant Violation(s)				Bail	Mirandized <input checked="" type="checkbox"/>	Star 441	Date/Time 3/24/08 16:35	Statement <input checked="" type="checkbox"/>	
	Citation #	Violation(s)				Appear Date/Time		Location of Appearance		
	Book/Cite Approval		Star	Mass Arrest Code		M X-Rays <input type="checkbox"/>				
Other Information: Citation/Warrant/Booking Charge(s)/Missing Persons-Subject Description/Scars, Marks, Tattoos Released per 849 (b) PC										
P V T P E R S O N A R R E S T	<input type="checkbox"/> ORIGINAL PRIVATE PERSON'S ARREST FORM BOOKED AS EVIDENCE. PHOTOCOPY ATTACHED WITH THIS REPORT.									
	CODE	Name (Last, First Middle)				Alias				
	Day Phone	Type	Home Address				City	State	Zip Code	
	Night Phone	Type	Work Address				City	State	Zip Code	
	School (if Juvenile)		Race	Sex	DOB Unknown <input type="checkbox"/>	DOB	Height	Weight	Hair Color	Eye Color
	SFNO	J/D# (if Juv.)	ID No.		ID No.		ID No.			
	Book/Charge 1		Book/Charge 2		Book/Charge 3		Book/Charge 4		Book/Charge 5	Where Booked
	Warrant #	Court #	Action #	Dept	Enroute To			CWB Check	Star	
	Warrant Violation(s)				Bail	Mirandized <input checked="" type="checkbox"/>	Star	Date/Time 3/24/08	Statement <input checked="" type="checkbox"/>	
	Citation #	Violation(s)				Appear Date/Time		Location of Appearance		
Book/Cite Approval		Star	Mass Arrest Code		M X-Rays <input type="checkbox"/>					
Other Information: Citation/Warrant/Booking Charge(s)/Missing Persons-Subject Description/Scars, Marks, Tattoos										
P V T P E R S O N A R R E S T	<input type="checkbox"/> ORIGINAL PRIVATE PERSON'S ARREST FORM BOOKED AS EVIDENCE. PHOTOCOPY ATTACHED WITH THIS REPORT.									

SFPD377 C (11/02)

080310136

San Francisco Police Department
PROPERTY LISTINGS

E	Code/No EVD 1	Item Description Shotgun, sawed-off				Brand Mossberg	Model 500A	
1	Serial No. Destroyed	Gun Make MOSSBERG	Caliber 12 gauge	Color BLU	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 441	From Where Waistband of (B) Lintz						
	Additional Description/Identifying Numbers							
E	Code/No EVD 2	Item Description Live shotgun shells				Brand Winchester	Model	
2	Serial No.	Gun Make	Caliber 12 gauge	Color RED	Narcotics Lab No.	Quantity 2	Value	
	Seized by (Star) 423	From Where Inside of (E1) Shotgun						
	Additional Description/Identifying Numbers Shell #1: Win Super X, 2 3/4" shell, 00 buckshot Shell #2: Win Western 3" Magnum, #2 shot							
E	Code/No EVD 3	Item Description Statements				Brand	Model	
3	Serial No.	Gun Make	Caliber	Color WHI	Narcotics Lab No.	Quantity 4	Value	
	Seized by (Star)	From Where						
	Additional Description/Identifying Numbers							
E	Code/No EVD 4	Item Description Videotape				Brand Maxell	Model 6 hour	
4	Serial No.	Gun Make	Caliber	Color BLK	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star)	From Where						
	Additional Description/Identifying Numbers							
E	Code/No EVD 5	Item Description Certificates of Release				Brand SFPD	Model 184	
5	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 3	Value	
	Seized by (Star)	From Where						
	Additional Description/Identifying Numbers							
	Code/No	Item Description				Brand	Model	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
	Seized by (Star)	From Where						
	Additional Description/Identifying Numbers							
	Code/No	Item Description				Brand	Model	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
	Seized by (Star)	From Where						
	Additional Description/Identifying Numbers							

San Francisco Police Department

080310136

VEHICLE INFORMATION

VEHICLE CODES: B - BOOSTED; D - DAMAGED; F - USED FELONY; T - TOWED; U - USED OTHER; V - VANDALIZED; X - STRIPPED

VEHICLE INFORMATION	Code	Plate No.	State	Reg Yr	Plate Type	VIN No.	
	F	2HSR293	CA	2009	PC	1JCMR7844JT138551	
	Veh Year	Make			Model		
	1988	Jeep (1970-1988)			Jeep		
	Style	Color			Plates/VIN Match?	Plates Missing?	
	Sport Utility Vehicle			Maroon		<input type="checkbox"/>	FRONT <input type="checkbox"/> REAR <input type="checkbox"/>
	Condition (Check all that apply)				Damage	Point of Entry	
	APPARENTLY DRIVABLE <input checked="" type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGED? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>						
	Crime Scene Tech. Notified?	387 Form Given to Owner?	Tow Approved By (Name)		Star	Towed to (Name/Address)	
	<input type="checkbox"/>	<input type="checkbox"/>				Tow Check (Name) Star	
	Hold For		Other Information				
OWNER	Registered Owner Business Name/Last Name, First Name					Residence Phone	
	Toney Charles						
	Residence Address		City	State	Zip	Business Phone	
	66 Ardath Ct		San Francisco	CA	94124-		

VEHICLE INFORMATION	Code	Plate No.	State	Reg Yr	Plate Type	VIN No.
	Veh Year	Make			Model	
	Style	Color			Plates/VIN Match?	Plates Missing?
					<input type="checkbox"/>	FRONT <input type="checkbox"/> REAR <input type="checkbox"/>
		Condition (Check all that apply)				Damage
	APPARENTLY DRIVABLE <input type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGED? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>					
	Crime Scene Tech. Notified?	387 Form Given to Owner?	Tow Approved By (Name)		Star	Towed to (Name/Address)
	<input type="checkbox"/>	<input type="checkbox"/>				Tow Check (Name) Star
	Hold For		Other Information			
OWNER	Registered Owner Business Name/Last Name, First Name					Residence Phone
	Residence Address		City	State	Zip	Business Phone

VEHICLE INFORMATION	Code	Plate No.	State	Reg Yr	Plate Type	VIN No.
	Veh Yr	Make			Model	
	Style	Color			Plates/VIN Match?	Plates Missing?
					<input type="checkbox"/>	FRONT <input type="checkbox"/> REAR <input type="checkbox"/>
		Condition (Check all that apply)				Damage
	APPARENTLY DRIVABLE <input type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGED? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>					
	Crime Scene Tech. Notified?	387 Form Given to Owner?	Tow Approved By (Name)		Star	Towed to (Name/Address)
	<input type="checkbox"/>	<input type="checkbox"/>				Tow Check (Name) Star
	Hold For		Other Information			
OWNER	Registered Owner Business Name/Last Name, First Name					Residence Phone
	Residence Address		City	State	Zip	Business Phone

080310136

San Francisco Police Department
NARRATIVE

On 03/24/08 at 1552 hours, I was in plainclothes in an unmarked police vehicle with Officers Scott #441, Coleman #4184 and Ellis #1994. We were searching the area of Hudson and Ardath due to an anonymous report of a black male in a vehicle waiting to kill a victim of a prior shooting. As we drove S/B on Hudson near Ardath Ct we were passed by an (F) Jeep with a driver side tail light out. Officer Coleman spotted the violation and followed the vehicle N/B Hudson towards Reuel Ct.

Officer Coleman stopped the vehicle as it turned right onto Reuel Court. As the vehicle stopped the occupant of the rear passenger side seat, later identified as (B1) Lintz, exited the vehicle. I quickly exited our vehicle and told Lintz he was not free to leave the vehicle. Lintz paused, then walked back to the vehicle quickly. Lintz was carrying a heavy camouflage coat in his left hand and wearing bulky, loose clothing capable of concealing a firearm. I was immediately suspicious of Lintz's hasty exit and quick return to the vehicle and my first thought was that he had something on him that he did not want us to find.

Upon re-entering the vehicle, Lintz looked nervous as I spoke to him through the still open rear door. Lintz reached for his left waistband area that was covered by his jacket. Fearing for my safety I told him to keep his hands where I could see them. Officer Scott joined me near the open rear door. Lintz again reached for his left waistband area and I loudly ordered "Keep your hands where we can see them!" Lintz briefly complied and then returned his hands to his left waistband area. Worried that Lintz was trying to draw a gun, I drew mine and noticed Officer Scott had done the same. As I yelled "Hands up! Now!" I heard Officer Scott yelling something similar. Lintz refused to comply and continued to fumble with an object in his left waistband. I yelled "Out of the car with your hands up!!" At that point Lintz began to slowly exit the vehicle and I grabbed his hands to prevent him from again reaching for his waistband. Officer Scott then reached past me as I noticed the receiver of an (E1) sawed-off shotgun that was partially down Lintz's pant leg. Officer Scott removed the shotgun from Lintz's left waistband as I watched, holding Lintz's hands. I then handcuffed Lintz and searched him.

Officer Ellis noted that the suspect from a recent shooting in the area on Beatrice was a black male with dreadlocks matching Lintz's description. I made an unsuccessful attempt to notify Sgt./Insp. Chaplin #951, who is investigating that shooting.

The driver of the vehicle (D2) Toney, front passenger, (D3) Williams, and rear driver side passenger, (D4) Wilkins, were all removed from the vehicle and detained for officer safety. A search of the vehicle for additional contraband was then conducted with negative results. I safely unloaded the shotgun and found two live (E2) 12 gauge shells in the magazine. All subjects, evidence, and the vehicle were transported to Bayview Station for further investigation. At the station I measured the sawed off barrel of the shotgun and noted it was 14 3/4 inches long, well below the legal limit of 18 inches. Due to removal of the gun's stock and shortening of the barrel, the overall length of the gun was only 23 inches, not 26 inches as required by law. The serial number of the gun had been scratched off, making it impossible to read. I requested the SFPD Crime Lab Firearms Unit attempt to chemically raise the serial number in order to locate the legal owner of the shotgun and determine if it was stolen.

Toney, Williams and Wilkins were all Mirandized and wrote (E3) statements regarding the incident. In their statements all three subjects discuss getting into the Jeep on Ardath and being stopped shortly thereafter by us. Lintz (alias "Zuke") is described by Williams entering the car on Ardath after asking for a ride down the hill. At the station, Officers Scott and Ellis Mirandized and interviewed Lintz. During the interview, Lintz admits to possessing the firearm in the vehicle, concealing it on his person, knowing that it was loaded, and knowing that the gun had been cut down. He said he found it near Ardath Ct and brought it in the car with him when he got a ride from his friend. The interview was recorded on an (E4) videotape. The tape, (E5) certificates of release, and written statements were booked as evidence by Officer Ellis at Bayview Station. The shotgun and ammunition were booked as evidence by Officer Scott.

It should be noted that Lintz has two felony convictions making it illegal for him to possess firearms (Case #001-425-035, Court #01957963). He also has a past history of violent crime and firearm possession. Lintz was booked at Bayview Station on the listed charges with approval from Sgt. Ewins #733. Dave #1713 of CWB conducted a warrants check with negative results. Toney, Williams and Wilkins were released per 849 (b) PC from Bayview Station. Toney's vehicle was returned to him upon his release. A copy of this report was faxed to ATF/Triggerlock II.

Declaration Of James Lintz
Exhibit B

1 BARRY J. PORTMAN
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2 GEOFFREY A. HANSEN
Assistant Federal Public Defender
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4 San Francisco, CA 94102
Telephone: (415) 436-7700
5
6 Counsel for Defendant LINTZ
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)	No. CR-08 - 298 SI
)	
12 Plaintiff,)	DECLARATION OF JAMES LINTZ
)	
13 vs.)	
)	
14 JAMES LINTZ,)	
)	
15 Defendant.)	
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16
17 I, James Lintz, declare that the following:

- 18 1. On March 24, 2008 at approximately 4:00 p.m., I was in a car in the Hunter's Point District
19 of San Francisco driven by a friend Charles Toney, who drives a Jeep Cherokee. There were two
20 other people in the car.
- 21 2. Mr. Tooney pulled out of Ardath Court onto Hudson Avenue, and began to drive northbound.
22 We drove past Cashmere Street, and at that point I asked Mr. Toney to pull over and drop me off
23 on Reuel Court.
- 24 3. Mr. Toney drove right onto Reuel Court and stopped the car. At that point in time, we had not
25 been stopped by police, and there was no car directly behind us.
- 26 4. I got out of the car and began to walk away. When I was about 10 feet away from the car, a

1 Ford Crown Victoria came around the corner and pulled up behind Mr. Toney's car. The Crown
2 Victoria then put on grill emergency lights, indicating that it was a police car.

3 5. At least two officers got out of the car, and one of them told me to stop walking and to get
4 back into the car. I immediately complied by walking the 10 feet back to the car and getting back
5 into the rear of Mr. Toney's vehicle. I did not think I was free to keep walking at that point due
6 to the police officer's order to return to the car.

7 6. Soon thereafter, I was ordered to get out of the car, and was searched by the police.

8
9
10 I declare under penalty of perjury that these statements are true and correct to my best
11 information and belief.

12
13 Dated: June 25, 2008


James Lintz